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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9110 OF 2023**

Ravindra Arvind Bande ... Petitioner

Vs.

Vijaya Manohar Bande and Others ... Respondents

Mr. Anil Anturkar, Senior Advocate a/w/ Mr. Sumit Sonare i/b. Mr.
Prathamesh Bhargude for the Petitioner.

Mr. Sidheshwar Biradar for the Respondents.

Mr. C.D. Mali, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 19th JANUARY 2024

P.C.

1. Heard.

2. This petition takes an exception to the order dated 12th July 2023 passed by the Joint Director, Marketing, Agriculture Produce Market Committee on an application filed by the petitioner objecting to the maintainability of the Appeal No. 18 of 2023 filed by respondent nos. 1 and 2.

3. The order impugned in the said appeal filed by respondents nos. 1 and 2 is an order passed by the Market Committee deciding the applications pursuant to the common order of remand passed by this court on 24th March 2023 in Writ Petition No. 1141 of 2022 and Writ Petition No. 1120 of 2022. The said Writ Petitions were filed by the petitioner challenging the order passed in appeals preferred by the petitioner under section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 ("the said Act"). The order dated 24th March 2023 indicates that the appeals were preferred by the petitioner challenging the cancellation of the license granted to the petitioner and issuing the license to respondent nos. 1 and 2 in respect of the same stall.

4. Learned senior counsel appearing for the petitioner submitted that the petitioner had filed an application in the appeal raising various grounds with respect to maintainability of the appeal filed by respondent nos. 1 and 2. He submitted that perusal of the application filed by the petitioner would show that various grounds were raised including a ground that the order impugned in the appeal could not have been said to be an order passed under Section 7 or 8 of the said

Act. He therefore submitted that the order impugned in the appeal is not an order under any of the provisions of the said Act, hence an appeal under section 52B of the said Act is not maintainable. He further pointed out the impugned order and submitted that the Appellate Authority has not considered any of the submissions and has rejected the application only by a two line order by stating that the appeal is required to be decided on merits.

5. Learned counsel for respondent nos. 1 and 2 supported the order and submitted that there is no merit in the application filed by the petitioner raising preliminary objection regarding the maintainability of the appeal. He submitted that the order impugned in the earlier round of litigation before this court was an order passed in appeals filed by the petitioner under section 52B challenging the decision on the applications filed by both parties for a grant of license for the same stall. In view of the order passed by this court on 24th March 2023, the order of Appellate Authority was set aside and the matter was remanded back to the Market Committee for taking an appropriate decision with respect to the allotment of the stall. He therefore submitted that the decision taken by the Market Committee pursuant to

the order passed by this court is for the purpose of deciding the allotment of stall as provided under the provisions of the said Act. Feeling aggrieved by the decision of the Market Committee after remand the respondent nos. 1 and 2 have preferred the appeal under Section 9 read with Section 52B of the said Act. It is therefore submitted that the appeal preferred by respondents nos. 1 and 2 is maintainable.

6. Learned AGP also supports the submissions made on behalf of respondents nos. 1 and 2 and states that the provisions of Section 9 read with Section 52B of the said Act clearly provide for an appeal under the provisions of the said Act. According to the learned AGP appeal preferred by respondent nos. 1 and 2 is maintainable.

7. I have perused the papers as well as the impugned order. Though the impugned order rejects the application filed by the petitioner by only giving a reason that the appeal requires to be heard on merits, a perusal of the provisions of Sections 9 and 52B clearly indicates that an appeal is provided to any person aggrieved by the decision taken or passed under the said Act to the Director, whether such decision is taken or order is passed by the Market Committee.

8. Perusal of the appeal memo filed by respondents nos. 1 and 2 indicates that the same is filed under Section 9 read with Section 52B of the said Act challenging the order dated 15th June 2023 passed by the Market Committee, pursuant to the order of remand passed by this court. The grounds raised by the petitioner in the application raising preliminary objection regarding the maintainability of the appeal are concerning the merits of the order impugned in the appeal.

9. Considering the provisions of the said Act and the order impugned in the appeal filed by respondents nos. 1 and 2, I do not find any reason to interfere in the impugned order only on the ground that no specific reasons are stated in the impugned order.

10. Perusal of the order impugned in the appeal indicates that the Market Committee has taken a decision on the applications for allotment of the stall in the exercise of the powers conferred under the said Act. This Court in paragraphs 20 to 22 of the Judgment and Order dated 24th March 2023 has made a distinction in the availability of the remedy of appeal under Sections 9 and 52B of the said Act. This Court in the said Judgment and Order has held in paragraph 22 that “ In substance, the scheme of the Act, 1963, which emerges from a

conjoint reading of the provisions contained in Section 9 and Section 52B of the Act, is to provide one appeal against the order granting or renewing a licence, or cancelling or suspending the licence and no more”.

11. Hence, there is no substance in the objection raised by the petitioner. Thus, considering the order impugned in the appeal and the provisions of the said Act, as stated hereinabove, the appeal filed by respondent nos. 1 and 2 is maintainable before the Appellate Authority. So far as the merits of the decision taken by the Market Committee are concerned the same will be decided by the Appellate Authority and it cannot be made a ground to contend that the appeal is not maintainable. Hence, I do not find any reason to exercise the powers under Article 227 of the Constitution of India to interfere in the impugned order. For the reasons stated above, the petition is dismissed.

[GAURI GODSE, J.]